



\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06.09.2023

+ CM(M) 17/2023

SMT. TRISHLA JAIN

..... Petitioner

Through: Mr. Udyan Srivastava, Advocate

versus

BABULAL GUPTA & ORS.

..... Respondents

Through: Mr. Tushar Sannu, Standing Counsel
for MCD with Mr Abhishek Singh,
Advocate for MCD

Mr. Ashok Mathur, Advocate
(Through VC)

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 10.10.2022 passed by the Additional District Judge – 04, North West, Rohini Courts, Delhi in CJ DJ 340/2022 titled as **Babu Lal Gupta v. MCD & Ors** ('Trial Court') whereby the application filed by the Petitioner under Order VIII Rule 1 and 10 Civil Procedure Code, 1908 ('CPC') read with Section 151 CPC for seeking condonation of delay in filing the written statement to the amended plaint was dismissed by the Trial Court.

1.1. The Petitioner herein is original defendant no. 7 and Respondent No. 1 is the original plaintiff in the civil suit.

1.2. The suit has been filed for recovery of possession, permanent



injunction and mandatory injunction in respect of property bearing plot no. 499, Khasra No. 44/10, Bhagya vihar, Jain colony, Madanpur Dabas, Delhi ('suit property'). The Petitioner herein has opposed the said relief claiming to be the title holder of suit property.

1.3. The original plaint was amended on 11.05.2022 and adjourned by the Trial Court for the date 10.10.2022. The written statement was filed by the defendant no. 7 on 23.08.2022 i.e., 74 days beyond the statutory period of 30 days.

1.4. The reason pleaded in the application was due to the unavailability of the counsel of the defendant no. 7 by reason of bereavement of his father and grandfather.

2. Learned counsel for the Respondent No. 1 i.e., plaintiff has entered appearance. He states that he has no objection if the order dated 10.10.2022 is set aside and the written statement is taken on record, subject to legal costs may be imposed on the Petitioner.

3. This Court has considered the submissions of the parties and perused the record.

4. In the facts of the present case, the plaint was permitted to be amended on 11.05.2022 and 30 days were granted to the defendant no. 7 to file his written statement but the written statement has been filed within 104 days from 11.05.2022.

5. In this regard, it would be appropriate to refer to the case of ***Randhir Singh v. Urvashi Suri*** passed by the learned Single Judge of this Court decided in ***CM (M) 717/2023 dated 04.05.2023*** where after taking note of the judgments of the Supreme Court and this Court, while considering the issue of closing the right of the defendant to file written statement, held that



the effort of the Court is always that disputes should ordinarily be decided on merits. The relevant portion of the said judgment reads as under:

“10. It is beyond cavil that the Supreme Court and the High Court by a catena of judgments have held in deserving cases that the delay in filing the written statement can be condoned, however, subject to a compensatory cost.

11. The Supreme Court in the judgments of Bharat Kalra v. Raj Kishan Chabra reported as 2022 SCC OnLine SC 613, Salem Advocate Bar Association, T.N v. Union of India, reported as (2005) 6 SCC 344, Kailash v. Nanhku, reported as (2005) 4 SCC 480 has held that the disputes ordinarily ought to be resolved on merits rather than on technicalities and, therefore, in situations where the trial has not reached advanced stages, it could be possible for the courts to condone the delay so as to ensure that the pleadings are complete and the disputes are resolved on merits.

12. Learned Division Bench of this Court in Jamaluddin v. Nawabuddin Neutral Citation Number - 2023/DHC/001211, has also considered the similar issues which were raised and condoned the delay, subject to compensatory costs.

xxx

xxx

xxx

14. The petitioner himself is aged about 69 years and this Court cannot overlook the fact that the age coupled with the past medical history of the petitioner/defendant, could have possibly, been the reason for the delay in filing the written statement.”

(Emphasis supplied)

6. In this case it is pleaded by the Petitioner that the counsel engaged by him for representing him and drafting the written statement suffered from personal losses inasmuch as there were multiple deaths in the family in June, 2022. The circumstances pleaded by the Petitioner i.e., defendant no.7 reasonably explain the extended time taken in filing the written statement.

6.1 Further, taking into account the nature of reliefs sought by the plaintiff in the above stated civil suit and in view of the rival pleas raised by the parties, it would be in the in the interest of justice that the defence of the Petitioner herein is brought on record for an effective adjudication of the rival claim of the parties. Considering the fact that defendant no. 7 is the only contesting party in the civil suit filed by the plaintiff and therefore, it



would be in the interest of justice that the defence of defendant no. 7 is considered by the Trial Court.

7. Accordingly, in view of the above, the order dated 10.10.2022 is set aside and the Trial Court is directed to take the written statement on record. However, the aforesaid opportunity is being granted to the Petitioner i.e., defendant no. 7 subject to the payment of legal costs of Rs. 5,000/- payable to the plaintiff on or before 12.09.2023.

8. Learned counsel for the Petitioner i.e., defendant no. 7 states on instructions that no adjournment will be sought before the Trial Court and defendant no. 7 will remain duly represented by his counsel on each date of hearing to co-operate in the expeditious disposal of the trial. The said undertaking of the defendant no. 7 is taken on record and is bound down to the same.

9. It is made clear that if the costs are not paid within the time granted by this Court, the liberty granted by this Court shall stand revoked. No application for extension of time for payments of costs will be entertained.

10. The aforesaid orders have been passed with the consent of the parties.

11. Accordingly, the present petition is allowed and the order dated 10.10.2022 is set aside in the aforesaid terms.

12. Pending Applications, if any, shall stands disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 6, 2023/rhc/ms